SUPREME COURT, U. S.

DEC 11 1969

JOHN F. DAVIS, CLERK

in the Supreme Court of the United States

OCTOBER TERM, 1969

No. 340

BERNIE LUDWIG,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

On Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District

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PETITION FOR REHEARING

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PETITION FOR REHEARING

The petitioner herein respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari, entered on November 17, 1969, and (2) granting the petition. As grounds for this motion, petitioner states the following:

1. The case of **Spinelli vs. The United States**

On January 27, 1969, this Court rendered its opinion in the case of **Spinelli vs. The United States** wherein this Court ruled that a mere allegation that the FBI "has been informed by a confidential reliable informant" that a wagering suspect was "operating" and "accepting wagers and disseminating wagering information" by means of two telephones carrying specified numbers was not enough to furnish probable cause for a search warrant, even though the informant's tip was corroborated in the affidavit by other allegations, based on an independent FBI investigation, that the suspect was a "known" gambler, and was seen entering and leaving the apartment in which the telephones specified by informant were listed.

In the instant case the petition for a writ of certiorari did not cite the **Spinelli** case, but it is obvious that said case is very definitely applicable to the facts of this case. As a matter of fact, the information received by the FBI in the **Spinelli** case and placed in their affidavit for a search warrant far exceeds the information placed by the police in the affidavit for a search warrant in the instant case.

The affidavit in the instant case is based solely upon the statements of an informant whose reliability or credibility is not even alleged. In the **Spinelli** case not only was it alleged that the informant was reliable but that an independent FBI investigation had corroborated material portions of the informant's information.

It would be unfair to the petitioner in the instant case to deny him relief for the reasons aforesaid when the petitioner, Spinelli, was granted relief.

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for writ of certiorari, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

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Attorney for Petitioner

CERTIFICATE OF COUNSEL

As counsel for the petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58 (2).

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Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Rehearing was mailed to EARL FAIRCLOTH, JR., Attorney General for the State of Florida, 1350 Northwest 12th Avenue, Miami, Florida 33125; Clerk of the Florida District Court of Appeal, Third District, 1350 Northwest 12th Avenue, Miami, Florida 33125; Clerk of the Supreme Court of Florida, Tallahassee, Florida 32304; Clerk of the Criminal Court of Record of Dade County, Florida, 1351 Northwest 12th Street, Miami, Florida 33125, this ____ day of December, 1969.

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Attorney for Petitioner